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EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

Congress of the United States
House of Representatives
Washington, DC 20515-2107

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396-2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875-2900

<http://markey.house.gov>

August 16, 2007

The Honorable Michael Chertoff
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

Recent media reports of an unprecedented expansion of access to imagery from United States spy satellites for domestic surveillance purposes raise significant questions about the scope of this new program, its legal basis, implications for commercial satellite competition, the privacy safeguards in place to prevent abuse and related issues. ("U.S. to Expand Domestic Use Of Spy Satellites", The Wall Street Journal, August 15, 2007). Accordingly, I request that the Department respond to the questions that follow.

- (1) According to press reports, U.S. security officials currently have access to images from spy satellites, albeit on a case-by-case basis that requires vetting by the Geological Survey's Civil Applications Committee. Why is the current process inadequate? Over the past 12 months, how many requests for access has the Civil Applications Committee considered? How many of these requests were denied, if any? How many requests were contingent on modifications, if any?
- (2) A May 2007 memorandum reportedly sent to you from Director of National Intelligence (DNI) McConnell seeks the cooperation of the Department in assisting civilian agencies and law enforcement gain access to the satellite spy network. Is this accurate? If yes, please provide a copy of this memorandum.
- (3) How does the Department plan to ensure that Americans' privacy and civil rights are protected once this new surveillance program becomes operational? Specifically:
 - a. What policies and procedures currently are used to evaluate requests for domestic use of spy satellites? What policies and procedures currently are used to guide the use and dissemination of information obtained through the domestic use of spy satellites? Please provide a copy of these materials.
 - b. How will new guidelines be developed to govern the program after its mission has been reoriented? Will the Department utilize a formal rulemaking process? If not, will the public have the opportunity to comment on the guidelines as they are crafted and review them after they have been finalized? If the public will not have this opportunity, why not?
 - c. Will the Department commence this new domestic surveillance program prior to the completion of formal policies and procedures for ensuring that

Americans' privacy and civil rights are protected from unlawful intrusions enabled by the program? If yes, why?

- d. Will the Department or any of the civilian agencies that utilize the imagery and/or other output from the spy satellites retain any of this information after it has been evaluated? If yes, for how long a period of time will this information be retained, and what specific data security and privacy measures will the Department utilize to prevent unauthorized access to this stored information?
 - e. Will the Department maintain audit trails to track the dissemination of this sensitive information? If yes, please describe how audit trails will be designed and used. If not, why not?
 - f. What memoranda, opinions or analyses have been prepared to assess the legality of this new surveillance program? Did any such opinions or memoranda consider whether this new program violates the Posse Comitatus Act? Did any of the legal assessments dissent from the view that the contemplated program is lawful? Please provide a copy of all legal assessments. If these assessments have not been conducted, why not?
 - g. It has been reported that oversight of this program will be performed by Department and DNI legal counsel and Inspectors General. Is this accurate? According to the Department's August 15, 2007 "Fact Sheet: National Applications Office", the NAO will be reviewed annually on its performance, including a review of its protection of privacy and civil liberties. Will the public have access to the results of these reviews?
 - h. If reviews of the program uncover improper usage of the program in a manner that undermines Americans' privacy and civil liberties, will the Department convey such information to the Congress and the public? If not, why not?
 - i. How will the Department handle complaints from individuals subjected to surveillance under this program?
- (4) Did the Department seek the commercial availability of satellite services for domestic use for missions alluded to in press reports and conclude there were no commercial satellite services capable of fulfilling these objectives? If it did not seek domestic, commercially-available services first, please explain. If it did, please describe the nature of such search or solicitation and the results, as well as any the reasons domestic commercial satellite services were deemed inadequate.
- (5) Has the Department consulted with the Federal Communications Commission or the Department of Commerce about the commercial and competitive implications of utilizing government-owned and operated military assets for domestic uses? If so, please provide the nature of the consultation and the dates upon which it occurred.
- (6) Has the Department conducted its own analysis of the ability of the U.S. commercial satellite industry to fulfill any of the tasks and objectives it now intends to turn to military spy satellites to achieve? If not, why not?
- (7) Concerns have been raised about the subordination of the current scientific mission of the program as its purposes are expanded to include homeland security objectives. What plans does the Department have to ensure that vital scientific activities are not eroded when this new program becomes operational?

Department of Homeland Security Chief Intelligence Officer Charles Allen has noted in press accounts that this program must be vetted through a legal process to prevent inappropriate activities that undermine Americans' privacy and civil rights. I look forward to the Department's response to assess how effectively such views will be translated into concrete policies and procedures governing this sweeping new program. Please provide a response within 15 business days, or no later than Friday, September 7, 2007.

Sincerely,

A handwritten signature in black ink that reads "Edward J. Markey". The signature is written in a cursive, flowing style with a large, prominent "E" and "M".

Edward J. Markey
Chairman
House Subcommittee on Telecommunications
and the Internet